

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Triangle Aggregates, LLC)
Waterways and Baton Rouge Pits)
Clarke County, Alabama)

NPDES Permit No. AL0067148)

Consent Order No. - -CMNPS

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Triangle Aggregates, LLC (hereinafter "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

STIPULATIONS

1. The Permittee operates two non-mettalic construction sand and gravel pits known as the Waterways Pit and the Baton Rouge Pit. The Waterways Pit is located on Waterways Road in Jackson, Clarke County, Alabama and discharges pollutants from point sources into Rabbit Creek, a water of the state. The Baton Rouge Pit is located on Baton Rouge Road in Jackson, Clarke County, Alabama and discharges pollutants from point sources into an unnamed tributary to Rabit Creek, a water of the State.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water

Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. The Department reissued the Permittee's National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0067148 (hereinafter "Permit") on January 31, 2007, establishing limits on the discharge of pollutants from point sources, designated therein as outfalls 001, 002, 003 into Rabbit Creek and outfalls 004 and 005 into an unnamed tributary to Rabbit Creek, both waters of the State. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from outfalls 001 and 002 into the aforementioned Rabbit Creek in violation of the limitations established in the Permit. The months the violations occurred along with the parameters violated are listed below:

Monitoring Period	Outfall	Parameter	Description	Reported Value	Permit Limit
September 2007	001	Total Suspended Solids	Daily Maximum	36 mg/L	35.0 mg/L
November 2007	002	Total Suspended Solids	Daily Maximum	44.5 mg/L	35.0 mg/L
December 2007	001	Total Suspended Solids	Daily Maximum	55 mg/L	35.0 mg/L
December 2007	002	Total Suspended Solids	Daily Maximum	49 mg/L	35.0 mg/L

6. The Permittee violated Part I.B.8.a(1) of the Permit by failing to submit all DMRs for the following monitoring periods, by the required submittal date:

Monitoring Period	Outfall	Due Date	Received Date
4 th Quarter 2007	all outfalls	January 28, 2008	February 4, 2008
1 st Quarter 2008	003	April 28, 2008	March 5, 2009
2 nd Quarter 2008	all outfalls	July 28, 2008	August 29, 2008
3 rd Quarter 2008	all outfalls	October 28, 2008	November 19, 2008
4 th Quarter 2008	all outfalls	January 28, 2009	February 10, 2009

7. The Department issued Notices of Violation (hereinafter "NOV") to the Permittee on

April 13, 2007, and March 31, 2008, which addressed the Permittee's failure to submit noncompliance notifications, discharge limitation violations, and the calculation of the daily average.

8. The Permittee responded to the NOVs in writing on May 14, 2007, and April 17, 2008. The Permittee provided that it would correct the monthly average reporting violations and provided that corrective actions had been implemented to reduce the Total Suspended Solids (hereinafter "TSS") concentrations at outfalls 001 and 002.

9. The Department conducted an inspection of the Waterways Pit and the Baton Rouge Pit on February 27, 2008. During the inspection, several deficiencies and violations that included unsatisfactory discharge water quality and failure to implement and maintain Best Management Practices (hereinafter "BMPs") were noted.

10. Unsatisfactory discharge water quality was noted at outfalls 001, 004, and 005 at the time of the February 27, 2008 inspection. The discharges from outfalls 001 and 004 had pH values of 5.76 s.u. and 5.71 s.u., respectively. The discharge from outfall 005 had a pH value of 5.23 s.u. and a TSS value of 359.0 mg/L. The pH values recorded for outfalls 001, 004, and 005 did not meet the daily minimum limitation of 6.0 s.u. provided in the Permit. The TSS value recorded for outfall 005 exceeded the daily maximum limitation of 70.0 mg/L also provided by the Permit.

11. Failure to implement and maintain BMPs were noted at outfalls 002, 004, and 005. The dams associated with outfalls 002, 004, and 005 were not properly stabilized resulting in significant erosion.

12. The Department conducted a second inspection on April 2, 2008, and evaluated the Permittee's BMP design, implementation, maintenance, and effectiveness. In addition, onsite and administrative compliance deficiencies were also assessed.

13. The Permittee's submittal dated April 3, 2008, included a list of deficiencies and recommendations to correct the deficiencies noted by the Department during the April 2, 2008, inspection.

14. The Department issued an NOV to the Permittee on April 14, 2008, addressing the

deficiencies and violations noted in the February 27, 2008 inspection report.

15. The Permittee consents to abide by the terms of the following Consent Order.

16. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

17. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit that delayed compliance may have conferred upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Permittee violated its Permit by the exceedance of discharge limitations, the late submittal of DMRs, and the deficiencies and violations noted during the February 27, 2008, inspection. The Department has no evidence of irreparable harm to the environment or of any threat to the health and safety of the public as a result of the violations stated herein.

B. **THE STANDARD OF CARE:** The Permittee failed to achieve compliance with the terms and conditions of the Permit.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:

The Department has been unable to ascertain if there has been a significant economic benefit to the Permittee as a result of these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects as a result of the violations cited in this Consent Order.

E. HISTORY OF PREVIOUS VIOLATIONS: Historical violations were considered in the development of the civil penalty amount.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: Generally the violations fell into three broad categories of 1) discharge limitation violations; 2) late submittal of DMRs; and 3) failure to implement and maintain BMPs which have historically received penalty amounts of 1) \$100.00 to \$500.00; 2) \$100.00 to \$500.00; and 3) \$500.00 to \$2,500.00, respectively.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it, as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay the Department a civil penalty in the amount of \$5,200.00 to settle the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee shall submit an Engineering Report that identifies the potential causes of noncompliance and that summarizes an investigation of the changes necessary for the Permittee to implement to achieve compliance with the Permit. The Engineering Report shall be submitted so that it is received by the Department no later than ninety days after the effective date of this Consent Order. The Engineering Report must include a schedule for implementation (i.e., a Compliance Plan). At a minimum, the Permittee's Engineering Report must address the need for changes in maintenance and operating procedures, the need for modification of existing treatment works and collection system components, and the need for new or additional treatment works and collection system components. The Engineering Report must be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient to accomplish compliance with the NPDES Permit, then the Permittee must modify the Engineering Report so that it does accomplish compliance. The Permittee shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after receipt of the Department's comments. The Permittee agrees to complete implementation of the recommendations provided in the Engineering Report within 270 days from the effective date of this Consent Order.

D. The Permittee agrees to prepare and submit detailed Quarterly Progress Reports to the Department describing the Permittee's progress towards achieving compliance with items presented in the Compliance Plan. The Progress Reports shall be submitted so that they are received by the Department no later than three months after the effective date of this Consent Order and continuing every three months thereafter that the Permittee's performance obligations

under this Consent Order remain incomplete. In addition, the Permittee shall submit a written notice of noncompliance with each applicable imposed requirement. The notice of noncompliance shall be submitted so that it is received by the Department no later than fourteen days following each applicable due date contained in this Consent Order. Notices of noncompliance shall state the cause of noncompliance and the corrective action taken and shall also describe the Permittee's ability to comply with any remaining requirements of this Consent Order.

E. The Permittee agrees to comply with the pH and TSS limitations of NPDES Permit AL0067148 not later than 270 days after the effective date of this Consent Order.

F. The Permittee agrees that, after the effective date of this Consent Order, it shall pay stipulated penalties for each day it fails to meet any of the milestone dates or to satisfy any of the requirements set forth in or established by paragraphs A, C, D, and E contained herein. The stipulated civil penalties for failure to meet each milestone outlined herein or for failure to meet any milestone date presented in the accepted Compliance Plan or any other requirement date, except for *Force Majeure* acts, hereinafter defined as acts that occur beyond the Permittee's control, shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
1 st to 30 th day	\$100.00
31 st to 60 th day	\$200.00
After 60 days	\$300.00

If the Permittee fails to meet any milestone or any assigned date for a period of ninety days after any required date described in paragraphs A, C, D, and E, then the Department reserves the right to file a new action against the Permittee.

G. The parties agree that the cumulative stipulated penalties described in paragraph F above shall under no circumstances exceed \$12,000.00. Once stipulated penalties of \$12,000.00 are due to the Department and violations continue to occur, or, should violations continue to occur after the timeframe listed in the Engineering Report, then the Department shall be free to issue additional orders or to file suit against the Permittee in the Circuit Court of Montgomery County or in another court of competent jurisdiction to enforce compliance of this Consent Order.

H. The Permittee agrees to submit to the Department, payment of stipulated penalties due for failure to meet any of the milestone dates or to satisfy any of the requirements set forth in or established by paragraphs A, C, D, and E contained herein. Furthermore, the Permittee agrees to submit payment of stipulated penalties to the Department so that they are received by the Department no later than thirty days following the completion of the milestone or requirement. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

I. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

J. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

K. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

L. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and that are beyond the reasonable control of the Permittee, including its contractors and consultants, that could not be overcome by due diligence (i.e., causes that could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance,

changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

M. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility that would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed by other Orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

N. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

O. The Department and the Permittee agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

P. The Department and the Permittee agree that final approval and entry into this Consent Order is subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

Q. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or by the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

R. The Department and the Permittee agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

S. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Triangle Aggregates, LLC

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

By: Kevin Feltche

By: _____

Its: Plant Manager

Its: _____

Date: 6-9-09

Date: _____